

UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS

CIVIL ACTION NO. 04-10581PBS

YVETTE LOCKHART-BEMBERRY,  
Plaintiff

VS.

TOWN OF WAYLAND POLICE DEPARTMENT,  
ROBERT IRVING, in his capacity as CHIEF OF THE  
WAYLAND POLICE DEPARTMENT and  
DANIEL SAURO  
Defendants

**DEFENDANTS' ANSWER TO COMPLAINT AND DEMAND FOR JURY  
TRIAL**

**FIRST AFFIRMATIVE DEFENSE**

The defendants hereby state that the plaintiff's complaint fails to state a cause of action upon which relief can be granted.

**SECOND AFFIRMATIVE DEFENSE**

The defendants hereby answer the plaintiff's complaint, paragraph by paragraph, as follows:

**PARTIES**

1. The defendants are without sufficient knowledge or information to form a belief as to the allegations contained in this paragraph.
2. The defendants admit the allegations contained in this paragraph.
3. The defendants admit the allegations contained in this paragraph.
4. The defendants admit the allegations contained in this paragraph.

**STATEMENT OF FACTS**

5. The defendants are without sufficient knowledge or information to form a belief as to these allegations contained in this paragraph.

6. The defendants admit that there was a slope at the edge of the shoulder of the road where the plaintiff's car was, but deny the remainder of the allegations contained in this paragraph.

7. The defendants admit that Sgt. Daniel Sauro arrived to assist the plaintiff but deny the remaining allegations contained in this paragraph.

8. The defendants deny the allegations contained in this paragraph.

9. The defendants admit that plaintiff told Sgt. Sauro that her car had broken down but deny the remaining allegations contained in this paragraph.

10. The defendants admit that Sgt. Sauro requested the plaintiff, if she could, move the car to the side of the road but deny the remaining allegations contained in this paragraph.

11. The defendants admit that the plaintiff attempted to comply with Sgt. Sauro's request but deny the remaining allegations contained in this paragraph.

12. The defendants deny the allegations contained in this paragraph.

13. The defendants admit that the plaintiff attempted to move the car again, but deny the remaining allegations contained in this paragraph.

14. The defendants admit that the plaintiff lost control of the vehicle and that the car picked up speed. The defendants deny the remaining allegations contained in this paragraph.

15. The defendants are without sufficient knowledge or information to form a belief as to the allegations contained in this paragraph. To the extent necessary, the defendants deny the allegations contained in this paragraph.

16. The allegations contained in this paragraph state a conclusion of law to which the defendants need not respond. To the extent necessary, the defendants deny the allegations contained in this paragraph.

17. The allegations contained in this paragraph state a conclusion of law to which the defendants need not respond. To the extent necessary, the defendants deny the allegations contained in this paragraph.

**STATEMENT OF CLAIMS**  
**COUNT I—NEGLIGENCE**

18. The defendants hereby repeat their responses to the preceding paragraphs of the plaintiff's complaint.

19. The allegations contained in this paragraph state a conclusion of law to which the defendants need not respond.

20. The allegations contained in this paragraph state a conclusion of law to which the defendants need not respond.

**COUNT II—INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS**

21. The defendants hereby repeat their responses to the preceding paragraphs of the plaintiff's complaint.

22. The allegations contained in this paragraph state a conclusion of law to which the defendants need not respond.

23. The allegations contained in this paragraph state a conclusion of

law to which the defendants need not respond.

**COUNT III—VIOLATION OF 42 U.S.C. §1983**

24. The defendants hereby repeat their responses to the preceding paragraphs of the plaintiff's complaint.

25. The allegations contained in this paragraph state a conclusion of law to which the defendants need not respond.

26. The allegations contained in this paragraph state a conclusion of law to which the defendants need not respond.

**COUNT IV—VIOLATION OF THE M.C.R.A., M.G.L. c. 12§11H or I**

27. The defendants hereby repeat their responses to the preceding paragraphs of the plaintiff's complaint.

28. The allegations contained in this paragraph state a conclusion of law to which the defendants need not respond.

29. The allegations contained in this paragraph state a conclusion of law to which the defendants need not respond.

**COUNT V—NEGLIGANT SUPERVISION—MUNCIPAL DEFENDANTS**

30. The defendants hereby repeat their responses to the preceding paragraphs of the plaintiff's complaint.

31. The defendants deny the allegations contained in this paragraph.

32. The defendants deny the allegations contained in this paragraph.

33. The allegations contained in this paragraph state a conclusion of law to which the defendants need not respond.

34. The defendants deny the allegations contained in this paragraph.

35. The allegations contained in this paragraph state a conclusion of law to which the defendants need not respond.

**COUNT VI—NEGLIGENT SUPERVISION—MONELL  
CLAIM—MUNICIPAL DEFENDANTS**

36. The defendants hereby repeat their responses to the preceding paragraphs of the plaintiff's complaint.

37. The defendants deny the allegations contained in this paragraph.

38. The defendants deny the allegations contained in this paragraph.

39. The defendants deny the allegations contained in this paragraph.

40. The allegations contained in this paragraph state a conclusion of law to which the defendants need not respond.

41. The allegations contained in this paragraph state a conclusion of law to which the defendants need not respond.

**DEMAND FOR JUDGMENT**

WHEREFORE, the defendants deny that the plaintiff is entitled to Judgment in any amount against the defendants and, furthermore, the defense asks this Honorable Court to enter Judgment for the defendants and against the plaintiff along with interest, costs, and attorney's fees.

**AFFIRMATIVE DEFENSES**

**THIRD AFFIRMATIVE DEFENSE**

The individual defendants are entitled to qualified immunity.

**FOURTH AFFIRMATIVE DEFENSE**

The defendants state that they were justified in their acts or conduct and, therefore, the plaintiff cannot recover.

**FIFTH AFFIRMATIVE DEFENSE**

The defendants state that their actions and conduct were performed according to, and protected by, law and/or legal process, and that, therefore, the plaintiff cannot recover.

**SIXTH AFFIRMATIVE DEFENSE**

The defendants state that their actions are immune from suit as they are engaging in discretionary functions.

**SEVENTH AFFIRMATIVE DEFENSE**

The defendants state that they were privileged in their conduct and acts and that, therefore, the plaintiff cannot recover.

**EIGHTH AFFIRMATIVE DEFENSE**

By way of affirmative defense, the defendants state that the action is barred by the applicable Statute of Limitations.

**JURY CLAIM**

The defendants claim a trial by jury as to all issues properly triable to a jury.

Respectfully submitted,  
The defendants, The Town of Wayland  
Police Department, Robert Irving, in his  
Capacity as Chief of the Wayland Police  
Department, and Daniel Sauro

/s/ Jeremy Silverfine  
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Dated: April 5, 2004